

Lawsuits Filed Under SEC's Revised Rule 14a-8 No-Action Letter Process

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When the SEC announced changes to the Rule 14a-8 no-action letter process in November 2025, many observers—ourselves included—anticipated that some shareholder proponents might turn to litigation if companies excluded their proposals under the new framework. That anticipated litigation has now arrived. On February 17, 2026, two separate lawsuits were filed challenging company decisions to exclude shareholder proposals from their 2026 proxy materials. A third lawsuit followed just two days later, on February 19, 2026. These cases mark the earliest examples of litigation under this season's revised Rule 14a-8 no-action letter process.

The first two lawsuits, filed in federal courts in New York and Washington, D.C., both challenge exclusions based on the ordinary business exception under Rule 14a-8(i)(7). One involves a group of New York City pension funds challenging AT&T Inc.'s exclusion of an EEO-1 workforce diversity disclosure proposal; the other involves the Nathan Cummings Foundation challenging Axon Enterprise, Inc.'s exclusion of a political spending disclosure proposal. The third lawsuit, also filed in federal court in New York, involves a procedural dispute over whether PepsiCo, Inc. properly notified an individual shareholder represented by People for the Ethical Treatment of Animals (PETA) of alleged deficiencies in the proposal submission. All three companies filed exclusion notices¹ with the SEC and included the unqualified representation required by the Commission—namely, that each company has a reasonable basis to exclude the proposal based on the provisions of Rule 14a-8. While the SEC has yet to react, and may not given prior statements, these lawsuits offer useful lessons for companies navigating exclusion decisions this season. This alert focuses on the first two lawsuits, though the emergence of a procedural challenge underscores that litigation risk extends beyond substantive questions of excludability.

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The AT&T Lawsuit

In the first case, the plaintiffs—including the New York City Employees' Retirement System, Teachers' Retirement System of the City of New York, the New York City Police Pension Fund, and the New York City Board of Education Retirement System—seek an injunction to prevent the company from soliciting shareholder proxies without including their proposal in the upcoming proxy statement. The proposal asks the company to adopt a policy requiring public disclosure of its EEO-1 workforce diversity report. In its exclusion notice, the company stated that it had "*a reasonable basis to exclude the Proposal, including, but not limited to, the ordinary business exclusion*" under Rule 14a-8(i)(7)—but provided limited additional analysis.

The complaint relies at least in part on the lack of explanation for the company's decision to exclude the proposal and puts the question of who bears the burden to prove reasonable basis front and center: "*It is the company's burden to prove that it has a valid basis to exclude a proposal from a shareholder who meets the eligibility criteria of the SEC rules. Because [the company] has not done so, [the company's] decision to exclude the Funds' proposal is unlawful.*"

Even though the company has yet to file its proxy statement, the pension funds ask the court to declare that the company's exclusion decision violates Section 14(a) and Rule 14a-8, to enjoin the company from soliciting shareholder proxies for its 2026 annual meeting without including the proposal in the proxy materials, and to award costs and attorneys' fees.

The Axon Lawsuit

The Nathan Cummings Foundation, an advocacy-focused foundation that regularly submits shareholder proposals, filed suit after Axon excluded its proposal requesting disclosure of the company's political spending policies and contributions. Unlike AT&T,

Axon submitted a detailed exclusion notice with extensive analysis arguing that the proposal sought to micromanage the company. The notice cited multiple precedents and included a detailed chart itemizing the categories of information required by the proposal.

The foundation's complaint argues that political spending is a significant policy issue that transcends ordinary business. It further argues that the proposal requests only basic categories of information—not the intricate detail that would support exclusion based on micromanagement. The foundation seeks a declaratory judgment that its proposal is not excludable under Rule 14a-8 and a preliminary and permanent injunction compelling the company to include the proposal in its 2026 proxy materials, which are also yet to be filed, as well as an award of costs and attorneys' fees.

Potential Consequences for the Companies

Historically, litigation under Rule 14a-8 has not been common.¹ Prior to this proxy season, companies typically would not exclude a shareholder proposal unless they had received no-action relief from SEC Staff, which was only granted following an analysis of the merits of the arguments made by the company. The independent review by SEC Staff likely served as a deterrent to proponents from litigating the matter in court.

Under the current regime, companies deciding to exclude shareholder proposals are relying solely on their own arguments as may be presented to the SEC in a letter, but not substantively reviewed by the SEC—leaving room for increased risk of contention from proponents. In each of the cases reviewed so far, proponents have requested injunctions (which could have significant ramifications for companies if granted), and, unhelpfully, there is precedent for shareholders who have prevailed in such litigation obtaining injunctions requiring the company to include the proposal in proxy materials.² Regardless of the

¹ See § 10:28. The Shareholder Proposal Rule—SEC No Action Letters; Private Rights of Action, 3 Law Sec. Reg. § 10:28 (referencing “relatively few judicial decisions interpreting Rule 14a-8”).

² See, e.g., *New York City Employees' Ret. Sys. v. Am. Brands, Inc.*, 634 F. Supp. 1382, 1392–93 (S.D.N.Y. 1986) (granting preliminary injunction preventing company from

outcomes of the recently filed cases, the companies involved will likely incur litigation costs and management distraction as these cases proceed. If a court grants an injunction, the affected company could opt to include the shareholder proposal in its proxy statement or face significant additional complications—delays to mailing and solicitation, the need to file a Form 10-K/A to timely include Part III disclosures that would otherwise be incorporated by reference from the proxy statement, and other possible disruptions to the annual meeting timeline. Even if the plaintiffs do not secure an injunction before the annual meeting, the litigation could still continue and potentially raise uncertainty about the annual meeting results. Should the proponents ultimately prevail, other remedies remain possible: a court could require a company to hold a special meeting to present the proposal, or mandate inclusion in next year's proxy statement—and the plaintiffs in the AT&T case have already signaled an openness to that outcome by stating in their complaint that if the proposal is omitted from this year's proxy materials, those proponents intend to resubmit it next year and “*to repeat this process until the proposal is adopted*”.

What These Cases Tell Us

The procedural history of these two lawsuits merit close examination for companies navigating this season's exclusion decisions.

The AT&T case: prior engagement, reversal, and a "short form" notice. According to the complaint in the first case, this was not the first time the proponents submitted this proposal to this company. The pension funds had submitted a similar proposal in 2020, and as a result of negotiations with the proponents, the company agreed to voluntarily disclose its EEO-1 report, prompting the proponents to withdraw the

seeking proxies for annual meeting without including plaintiff's proposal relating to guidelines for equal employment practices or using proxies obtained that way and directing company to make supplemental mailing about plaintiff's proposal); *Amalgamated Clothing & Textile Workers Union v. Wal-Mart Stores, Inc.*, 821 F. Supp. 877, 892 (S.D.N.Y. 1993) (enjoining company from omitting plaintiffs' proposal relating to equal employment

proposal. The company then published the report between 2021 and 2023 but discontinued the practice in 2024, allegedly without any explanation to the proponents. This history of engagement and settlement on this topic—and subsequent company reversal—may have contributed to the proponents' willingness to litigate.

The complaint contains no indication that the company engaged with the proponents during the current proxy season beyond copying them on its exclusion notice to the SEC. As we discuss further below, although not required or mentioned in the SEC's written guidance regarding changes to the Rule 14a-8 no-action letter process, the lack of engagement may itself have played a role here.

The company also submitted one of the few abbreviated exclusion notices [we have seen this season](#). Rather than including the detailed analysis typically found in no-action requests, the exclusion notice simply cited the ordinary business exclusion under Rule 14a-8(i)(7) and referenced a single prior no-action letter from 2021 involving a different company but substantially the same proposal. The company provided no additional analysis or company-specific rationale, in apparent reliance on the Staff's [statements during a December public discussion](#) that exclusion notices could be brief.

The Axon case: detailed analysis, but litigation nonetheless. The second case demonstrates that a detailed exclusion notice—while potentially important to support a company's statement of reasonable belief—does not eliminate litigation risk. Despite the company's thorough analysis, the proponent still filed suit. As in the AT&T case, the complaint does not suggest that the company engaged with the proponent before filing its exclusion notice. The foundation's

opportunity and affirmative action policies from proxy materials).

complaint emphasizes that the courts—not the SEC—are the ultimate arbiters of whether an exclusion is proper under Rule 14a-8, underscoring that with the SEC choosing to no longer provide substantive review, litigation may be the primary avenue for proponents to challenge exclusions.

Takeaways for Companies Considering Exclusion

These lawsuits underscore several practical considerations for companies as they navigate shareholder proposals this season—including the fact that the proponents in these cases have the institutional resources to pursue litigation. But the lessons apply broadly regardless of the identity of the shareholder proposal proponent, or now potentially plaintiff.

Provide detailed, company-specific analysis. The SEC may not require detailed exclusion rationales this season, but that does not mean companies should skip them. A thorough analysis connecting the rules and precedent to company-specific facts may serve as a litigation deterrent—giving proponents less room to argue the company failed to justify its decision—or help a company prevail in any litigation. ISS has also weighed in. In a December 2025 FAQ, the proxy advisor stated that companies excluding proposals on ordinary business grounds should clearly explain why they believe that to be the case—and when relevant precedent exists from the SEC or a court, companies should explain why they believe such precedent does or does not apply. ISS indicated that failure to present a clear and compelling argument for exclusion could constitute a governance failure, potentially leading ISS to highlight or flag the exclusion in its report, or in certain cases recommend votes against directors.

Notably, most companies already appear to be taking this approach. [Our review of exclusion notices](#) submitted through late January 2026 indicates that the overwhelming majority have continued to include detailed analysis comparable to traditional no-action requests.

That said, the Axon case illustrates that a detailed notice is not a complete shield. Where a proponent is

well-resourced and committed to the issue, litigation may follow even when a company has completed a thorough analysis.

Consult data to inform your exclusion strategy.

Companies can benefit from understanding the broader landscape: Has this proponent submitted similar proposals before, and how persistently? How has the SEC ruled on comparable proposals? How have shareholders voted when similar proposals reached the ballot? These data points can help assess both the likelihood of success and the potential for escalation.

The AT&T case illustrates the point. Our review suggests that since 2014, there have been at least five prior no-action requests involving EEO-1 disclosure proposals. One submitted in 2020 (when SLB 14K controlled) was granted on ordinary business grounds (the precedent cited by AT&T). Two were withdrawn—and notably, one of those withdrawals involved a New York City pension fund proponent. One submitted in 2014 (when SLB 14G controlled) was denied, meaning the company had to include the proposal—and that too involved a New York City retirement system proponent. On the voting side, there have been at least 26 votes on similar proposals, averaging 36.9% approval, with three exceeding 50%. Of those 26 votes, 19—or 73%—came from proposals submitted by New York City pension system proponents. This data suggests that EEO-1 disclosure is a priority issue for this proponent group. A company facing this proposal from this proponent group should expect persistence.

Track prior engagement history. Companies should maintain institutional knowledge about past settlements, withdrawals, or commitments made to proponents under the 14a-8 process. The fact that AT&T previously agreed to publish the report in response to the same proponents may have contributed to the proponents' rationale for litigating here. If a company decides to discontinue a practice it previously agreed to undertake, reaching out to the relevant proponent to explain the rationale may help mitigate escalation. Even a courtesy outreach can reduce the risk of scenarios that can lead to litigation.

Engage with proponents before excluding. Several proponents—including the [New York State Comptroller](#) and the [Interfaith Center on Corporate Responsibility](#)—have publicly called on companies for "good faith engagement" before unilaterally excluding proposals under the new Rule 14a-8 no-action letter process. These investors have indicated that without engagement, they may turn to litigation, vote-no campaigns, or other public-facing strategies. Neither complaint suggests that the companies engaged with the proponents beyond copying them on their respective exclusion notices. Even where a company believes exclusion is warranted, proactive outreach to a proponent before filing an exclusion notice can reduce escalation risk. While the SEC does not formally require engagement, it has informally encouraged engagement as a path to resolve shareholder proposal matters in lieu of a no-action process.

Consider the full spectrum of risk. The risk of excluding a proposal extends beyond potential adverse recommendations from proxy advisors. With the SEC no longer providing substantive review of exclusion rationales, proponents who disagree may feel they have limited options other than litigation. This means that until the SEC acts, exclusion decisions now carry increased potential for direct legal challenge, along with the potential associated costs, annual meeting

disruptions, management distraction, and reputational consequences.

The Road Ahead

The Axon case is already moving quickly—the court has set a hearing on the motion for a preliminary injunction for March 4, 2026. No similar timeline has been set in the AT&T case or the PepsiCo case. The outcomes for all three cases remain unclear.

What is clear, however, is that the SEC's lighter touch has not made the exclusion calculus any simpler. If anything, it has placed greater weight on the relationship between companies and proponents, and on the quality of a company's own analysis. The SEC's withdrawal from its role of substantive reviewer has removed what was previously a persuasive, if informal avenue for dispute resolution. Without it, proponents with the resources to litigate may do so—on both substantive and procedural grounds—and as these early cases suggest, more may follow. Companies assessing exclusion should consider the importance of documenting their reasoning thoroughly, engaging with proponents in good faith, and recognizing that the ultimate audience for their exclusion rationale may no longer be the SEC staff, but a federal judge.

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ⁱ Following the Staff's [November 2025 announcement](#) that it would no longer provide substantive responses to most Rule 14a-8 no-action requests, companies seeking a Staff response must include, as part of their Rule 14a-8(j) notification, an unqualified representation that the company has a reasonable basis to exclude the proposal. Where such a representation is included, the Staff will respond indicating that it will not object to the omission of the proposal from

the company's proxy materials — but solely on the basis of that representation, and without any independent evaluation of the merits of the company's arguments. Given this change in approach, we refer to letters submitted after the November 2025 announcement that include such an unqualified representation as "exclusion notices," to distinguish them from traditional no-action letters in which the Staff conducted a substantive review.